

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.70 of 1992

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- 1.Raghunandan Singh
- 2.Degree Singh, both sons of Late Ghutul Singh
- 3. Chotakan Singh
- 4.Ajay Singh
- 5. Dipen Singh, son of Raghunandan Singh
- 6.Dinesh Singh
- 7.Lapit Singh, both sons of Raghunandan Singh, all residents of village Paharpur, P.S.Agion, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 178 of 1992

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

Chhatrabali Singh, son of Raghunandan Singh, resident of village Paharpur, P.S. Agion, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 184 of 1992

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- 1.Ramchapit Singh
- 2. Sudarshan Aingh, both sons of Raghunandan Singh, residents of village Paharpur, P.S. Agion, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 198 of 1992

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

- 1.Lal Babu Singhm , son of Janakdhari Singh
- 2. Janakdhari Singh, son of Late Ghutul Singh, both residents of village Paharpur,

P.S. Agion, District-Bhojpur.

Versus

.... .... Appellant/s

State of Bihar

.... .... Respondent/s

**Appearance :**

For the Appellants: M/S N.A. Shamsi and Neeraj Kumar Sanidh

For the State : M/S. Mayanand Jha & S.N.Prasad

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE JUSTICE SMT. ANJANA MISHRA**

**ORAL JUDGMENT**


**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date: 24-07-2015**

As many as 17 persons were put to trial before the court of 5<sup>th</sup> Additional District and Sessions Judge, Arrah, in Sessions Trial No. 122 of 1988 through its judgment dated 24<sup>th</sup> April, 1992. The trial court convicted 12 persons i.e., Accused nos-1 to 12 for the offence of committing murder of two persons by name Godhani Singh(D-1) and Lal Bhukhan Singh(D-2), and sentenced them imprisonment for life . Accused Nos. 13 to 17, who are women, were acquitted.

2. Criminal Appeal No. 70 of 1992 is filed by Accused nos. 5, 6, 7, 8, 9, 10 and 12; Criminal Appeal No. 178 of 1992 is filed by Accused No. 3; Criminal Appeal No. 184 of 1992 is filed by Accused Nos. 1 and 4 ; and Criminal Appeal no. 198 of 1992 is filed by Accused no. 2 and 11.

3. The incident, leading to the case, occurred on 4-11-1987 at 10 A.M. at village Paharpur, in the district of Bhojpur. The information in this behalf was furnished by P.W. 4, son of D-2 and nephew of D-1. He stated that himself, his brother and other family members were standing at the door of their house in the morning hours, and at that time, the accused came in group armed with different weapons. Some of the accused are said to have started digging the land of P.W. 4 and his father, and when D-2 and D-1



objected to the said act, they were attacked by the accused. He further stated that when all of them were running from the place on being attacked, D-2 and D-1 fell down, and thereafter further attack was made by the appellants resulting in the death of D-1, on the spot. P.W.4, D-2 and other persons who were injured in the incident, are said to have gone to the Hospital at Agaion and as no facilities were available there, they went to Simraon State Dispensary. In between they said to have gone to the police station where the statement was recorded. In the hospital at Simraon some first aid is said to have been extended and such of the injured persons who were serious, are said to have been sent to the Government Hospital, Arrah. On the basis of the statement made by P.W.4 the police registered Agaion P.S. Case No. 47 of 1987. D-2 died while undergoing treatment at the hospital. Thereafter F.I.R. was lodged and inquest and post mortem examinations were conducted. On completion of investigation, chargesheet was filed against all the 17 accused. All of them pleaded not guilty and thereupon trial was conducted. On behalf of the prosecution P.W. 1 to 11 were examined. Documentary evidence comprised of the inquest report and post mortem report. The nature of the disposal of the case has already been indicated.


4. Learned counsel for the appellants submits that it was a case and counter-case, as is evident from the fact that while the information furnished by the prosecution party led to the registration of Agaion P.S. Case No. 47 of 1987, the one at the instance of the accused was registered as Agaion P.S. Case No. 48 of 1987. He contends that P.W.4 categorically stated that by the time he went to the police station, all the accused were present there, obviously for submitting the complaint, and the fictitious nature of the allegations and the occurrence is evident from the fact that P.Ws.5, 6 and 7, who

are none other than, wife, son and brother of the deceased did not support the case of the prosecution. He further contends that the medical evidence in the form of depositions of P.Ws. 8 and 9, and the post mortem report did not accord with the version presented by the prosecution in the other evidence.

5. Mr. Mayanand Jha, learned Additional Public Prosecutor, on the other hand, submits that this is a double murder case in which the police conducted a thorough investigation and adduced cogent and consistent evidence. He submits that P.W. 4 is an injured eye-witness and his evidence carries substantial credibility with it. Learned counsel further submits that the other witnesses, such as P.Ws. 1, 2 and 3 have supported the case of the prosecution as well as the evidence of P.W. 4, and the mere fact that P.Ws. 5, 6 and 7 did not speak in detail, does not make much of difference. He further contends that when the death occurred on account of mob attack, it is difficult to relate the specific injuries to the individual accused.

6. The incident is said to have taken place at 10 A.M. on 4-11-1987. It is referable to the boundary dispute as regards the land held by the accused party on the one hand and the prosecution party on the other. In his fardbeyan as well as the evidence P.W.4 stated that when himself and his family members were in their house, some of the accused came and started digging the land and thereupon father of the deceased objected to it. He is said to have received blow with the butt of gun by Accused-2 and Accused-11, whereas D-2 is said to have been attacked by Accused-5, Accused-3 and Accused-4.

7. There is some lack of clarity as to what happened in the alleged incident. If, in fact, D-1 died on the spot, further steps ought to have awaited furnishing the information to the police. P.Ws. 1 to 4 and deceased are said to have proceeded to the Hospital at Agaion. It



is important to note that the police station is located in the same village. Even if the police did not reach the place of occurrence immediately, P.W.4 and other injured persons are supposed to go to the police station first. However, they are said to have gone to the Hospital in that village first and from there all of them reached the police station. In his deposition P.W. 4 admitted that by the time they went to the police station, the accused were already there. The fact that the case was registered at their instance in relation to the same incident, discloses that it was not one sided affair. No treatment whatever was given at the Agaion Hospital and they moved to the hospital at Simera. There P.W. 8 treated not only prosecution party but also many of the accused. Such of the injured who were in serious condition were referred to the District Headquarter Hospital at Arrah. P.W. 9 treated D-2 at that hospital.

8. It has already been mentioned that P.W. 4 was a bit inconsistent in his version in several respects. It is also important to note that almost all the witnesses who spoke about the incident were members of the same family. It is curious, if not astonishing that P.W. 5, wife of D-1, P.W. 6, son of Gorakh Singh and P.W. 7, son of D-2 did not support the prosecution case. Neither they were declared hostile nor their evidence was taken into consideration. For all purposes their evidence appears to be of no use, but the fact that they were examined in court and they did not speak against the accused, discloses that the case pleaded by the prosecution was not trustworthy. Except that two deaths have taken place on the side of the prosecution party, the scuffle and quarrel between the parties was equally serious. P.W.8 admitted that he treated many of the accused and Agaion P.S. Case No. 48 of 1087 was registered.

9. The trial court also recognized the weakness of the

evidence. Obviously for that reason, it acquitted all the women accused, though the evidence and the nature of the accusation was common against almost all the accused. Differentiation only on the basis of sex would suggest that the case of the prosecution was concocted one or that the evidence was weak. Either way, the effect thereof cannot be restricted to the accused of one sex. We are convinced that the prosecution failed to prove its case against the appellants herein.

10. We, therefore, allow the appeal, set aside the conviction and sentence ordered by the trial court against the appellants. Since all of them are on bail, their bail bonds shall stand cancelled.

**(L. Narasimha Reddy,CJ)**

BK.Roy/-A.F.R

**(Anjana Mishra, J)**

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